RECORD AND BRIEFS

No. 15-9260

DEC 16 2016

IN THE

Supreme Court of the United States

LEVON DEAN, JR.,

Petitioner,

v.

UNITED STATES,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

JOINT APPENDIX

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CERTIORARI GRANTED OCTOBER 28, 2016

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U.S. District Court
Northern District of Iowa (Western Division)
CRIMINAL DOCKET
FOR CASE #: 5:13-cr-04082-MWB-2

Case title: USA v. Dean et al
Other court case number: 13 mj 239 Levon Dean

Assigned to: Judge Mark W Bennett
Referred to: Magistrate Judge CJ Williams

Appeals court case number: 15-1263
8th Circuit Court of Appeals

RELEVENT DOCKET ENTRIES

DATE	NO.	DOCKET TEXT
09/17/2013	4	SEALED Indictment as to Defendant Jamal Dean (1) on Counts 1, 2, 3, 4, 5, 6, 7 and 8: Defendant Levon Dean (2) on Counts 1, 2, 3, 4, 5, 6 and 8: Defendant Sarah Berg (3) on Count 1, 3, 5 and 8: Voting record in vault (Attachment # 1 Unredacted Version) (eUSA, eUSM, eUSP) (kfs) (Entered: 09/18/2013)

DATE	NO.	DOCKET TEXT
10/01/2013	21	MINUTE Entry for proceedings held before Magistrate Judge Leonard T Strand: Initial Appearance and Arraignment as to Defendant Levon Dean Jr (2) Count 1,2,3-4,5, 6,8 held on 10/1/2013. Attorney Doug Roehrich for defendant, and defendant pled not guilty. Indictment shall be deemed amended to reflect defendants name as Levon Dean Jr. Defendant is detained. (Court Reporter FTR Gold.) (djs) (Entered: 10/01/2013)
10/24/2013	41	SUPERSEDING Indictment as to Defendant Jamal Dean (1) on Counts 1s, 2s-3s, 4s-5s, 6s, 7s, 8s, 9s, Defendant Levon Dean, Jr (2) on Counts 1s, 2s-3s, 4s-5s, 6s, 7s, 9s, Defendant Sarah Berg (3) on Counts 1s, 2s, 4s, 6s, 9s. (Attachment: # 1 Unredacted Version) (kfs) (Entered: 10/25/2013)
03/19/2014	131	SECOND SUPERSEDING Indictment as to Jamal Dean (1) count(s) 1ss, 2ss-3ss, 4ss-5ss, 6ss, 7ss, 8ss, 9ss, Levon Dean, Jr (2) count(s) 1ss, 2ss-3ss, 4ss-5ss, 6ss, 7ss, 9ss, Sarah Berg (3) count(s) 1ss, 2ss, 4ss, 6ss, 9ss. Voting record in vault. (Attachments: # 1 Unredacted) (des) (Entered: 03/20/2014)

DATE	NO.	DOCKET TEXT
04/16/2014	154	THIRD SUPERSEDING Indictment as to Defendant Jamal Dean (1) on Counts 1sss, 2sss, 3sss, 4sss, 5sss, 6sss, 7sss, 8sss, 9sss, 10sss and 11sss: Defendant Levon Dean Jr (2) on Counts 1sss, 2sssk 3sss, 4sssk 5sss, 6sss, 7sss, 9sss, 10sss and 11sss: Defendant Sarah Berg (3) on Counts 1sss, 2sss, 4sss, 6sss, 9sss and 10sss (Attachment # 1 Unredacted Version) (kfs) (Entered: 04/17/2014)
08/25/2014	275	MINUTE Entry for proceedings held before Judge Mark W Bennett: Pretrial Conference, Voir Dire, Day 1 Jury Trial held on 8/25/2014 as to Jamal Dean, Levon Dean Jr (Court Reporter Shelly Semmler) (des) (Entered: 08/26/2014)
08/26/2014	276	MINUTE Entry for proceedings held before Judge Mark W Bennett: Day 2 of Jury Trial as to Defendants Jamal Dean and Levon Dean Jr held on 08/26/2014 (Court Reporter: Shelly Semmler) (kfs) (Entered: 08/26/2014)
08/27/2014	277	MINUTE Entry for proceedings held before Judge Mark W Bennett: Day 3 of Jury Trial as to Defendants Jamal Dean and Levon Dean Jr held on 08/27/2014 (Court Reporter: Shelly Semmler) (kfs) (Entered: 08/27/2014)

DATE	NO.	DOCKET TEXT
08/28/2014	279	INSTRUCTIONS to the Jury as to Defendant Jamal Dean, Levon Dean, Jr. Signed by Judge Mark W Bennett on 8/25/14. (djs) (Entered: 08/28/2014)
08/29/2014	281	MINUTE Entry for proceedings held before Judge Mark W Bennett: Day 4 of Jury Trial as to Defendants Jamal Dean and Levon Dean Jr held on 08/28/2014 (Court Reporter: Shelly Semmler) (kfs) (Entered: 08/29/2014)
08/29/2014	282	Jury Questions with Answer of the Court to Jury Question as to Defendants Jamal Dean, Levon Dean, Jr signed by Judge Mark W Bennett. (Attachments: # 1 Unredacted Jury Question) (djs) (Entered: 08/29/2014)
08/29/2014	283	MINUTE Entry for proceedings held before Judge Mark W Bennett: Day 5 Jury Trial as to Defendants Jamal Dean, Levon Dean Jr held on 8/29/2014. Jury verdict is reached. (Court Reporter Shelly Semmler) (des) (Entered: 08/29/2014)

DATE	NO.	DOCKET TEXT
08/29/2014	284	JURY VERDICT as to Defendants Jamal Dean (1) Guilty on Counts 1sss, 2sss, 3sss, 4sss, 6sss, 7sss, 9sss and Levon Dean Jr (2) Guilty on Counts 1sss, 2sss, 3sss, 9sss; Levon Dean Jr (2) Guilty of Lesser Offense Counts 6sss, 7sss; Jamal Dean (1) Not Guilty on Counts 5sss, 10sss and Levon Dean Jr (2) Not Guilty on Counts 4sss, 5sss, 10sss. (Attachments: # 1 Unredacted) (des) Modified text on 9/3/2014 (des). (Entered: 08/29/2014)
09/03/2014	289	JUDGMENT Of Acquittal as to Defendant Levon Dean Jr. Defendant, Levon Dean Jr, is acquitted as to Counts 4, 5, and 9 of the Third Superseding Indictment (Count 10sss renumbered as Count 9 for jury trial purposes). Signed by Judge Mark W Bennett on 9/3/2014. (des) (Entered: 09/03/2014)
09/05/2014	296	MOTION to Extend Time to File Rule 29/33 Motions filed by Defendant Levon Dean Jr (Stoler, Alan) (Entered: 09/05/2014)

DATE	NO.	DOCKET TEXT
09/08/2014	297	ORDER granting re 295 MOTION for Extension of Time to File Motion for New Trial and Motion for Judgment of Acquittal filed by Jamal Dean and 296 MOTION to Extend Time to File Rule 29/33 Motions filed by Levon Dean, Jr. Defendants shall file their motions for judgment of acquittal and new trial on or before 11/7/2014. No further extensions will be granted absent extraordinary circumstances. Signed by Judge Mark W Bennett on 9/8/14. (djs) (Entered: 09/08/2014)
10/30/2014	317	MOTION for Acquittal, MOTION for New Trial by Levon Dean, Jr. (Attachments: # 1 Brief In Support) (Stoler, Alan) (Entered: 10/30/2014)
12/23/2014	343	MEMORANDUM OPINION AND ORDER denying 318 Motion for Acquittal and Motion for New Trial as to Jamal Dean (1) and denying 317 Motion for Acquittal and Motion for New Trial as to Levon Dean Jr (2). Signed by Judge Mark W Bennett on 12/23/14. (djs) (Entered: 12/23/2014)
01/16/2015	347	SEALED Sentencing Memorandum By Defendant *Levon Dean,Jr.* as to Defendant Levon Dean, Jr (Stoler, Alan) (Entered: 01/16/2015)

DATE	NO.	DOCKET TEXT
01/16/2015	353	SEALED Presentence Investigation Report *Amended and Final Presentence Report with Sentencing Worksheet attached* by USA, Pat Korth, US Probation, Levon Dean, Jr as to Defendant Levon Dean, Jr (Attachments: # 1 Sentencing Worksheet) (Kuehl, Kelly) (Entered: 01/16/2015)
01/17/2015	356	SUPPLEMENT/ADDENDUM 347 Sealed Sentencing Memorandum by Defendant Levon Dean, Jr (Stoler, Alan) (Entered: 01/17/2015)
01/23/2015	364	MINUTE Entry for proceedings held before Judge Mark W Bennett: Sentencing held on 1/23/2015 as to defendant Levon Dean, Jr. Government's Exhibits filed at 286 . Defendant detained. (Court Reporter Shelly Semmler) (des) (Entered: 01/23/2015)

DATE	NO.	DOCKET TEXT
01/28/2015	366	JUDGMENT as to Defendant Levon Dean, Jr (2), Count(s) 1, 10sss, 11sss, 1s, 1ss, 2, 2s, 2ss, 3, 3s, 3ss, 4, 4s, 4ss, 4sss, 5, 5s, 5ss, 5sss, 6, 6s, 6ss, 7s, 7ss, 8, 9s, 9ss, Dismissed.; Count(s) 1sss, 2sss, 3sss, 6sss, 7sss, 9sss, Defendant is committed to the BOP for a total of: 400 months. This term of imprisonment consists of 40 months imposed on Counts 1, 2, 3 and 9 to be served concurrently with each other; 60 months imposed on Count 6, to be served consecutive to all other counts; and 300 months imposed on Count 7 of the Third Superseding Indictment, to be served consecutive to all other counts. Supervised Release: 3 years. This term of supervised release consists of a 3-year term imposed on each of Counts 1, 2, 3, 6, 7 and 9 of the Third Superseding Indictment, to be served concurrently. Special Assessment: $600.00. Signed by Judge Mark W Bennett on 1/28/15. (djs) (Entered: 01/28/2015)
01/28/2015	367	SEALED Statement of Reasons by USA, Pat Korth, US Probation, Levon Dean, Jr as to Defendant Levon Dean, Jr. (djs) (Entered: 01/28/2015)

DATE	NO.	DOCKET TEXT
01/30/2015	368	NOTICE of Appeal filed by Defendant Levon Dean Jr RE: 366 Judgment (Stoler, Alan) Modified text on 02/02/2015 (kfs) (Entered: 01/30/2015)
02/02/2015	369	NOA Supplement and Transmission of Notice of Appeal as to Defendant Levon Dean Jr to US Court of Appeals RE: 368 Notice of Appeal – Final Judgment: Case Number ddl 02/05/2015 (kfs) (Entered: 02/02/2015)
12/29/2015	396	OPINION of USCA as to Defendants Jamal Dean and Levon Dean, Jr as to 368 and 374 Notices of Appeal – Final Judgment: Affirming the judgments of the District Court in this well-tried, multiple-count, joint-defendant criminal case (Attachments: # 1 8CC Correspondence # 2 8CC Correspondence 2) (kfs) (Entered: 12/29/2015)
12/29/2015	398	JUDGMENT of USCA as to Defendant Levon Dean Jr RE: 368 Notice of Appeal – Final Judgment: Affirming the Judgment of the District Court (kfs) (Entered: 12/29/2015)

DATE	NO.	DOCKET TEXT
02/13/2016	400	ORDER of USCA as to Defendant Levon Dean Jr as to 368 Notice of Appeal – Final Judgment: The petition for rehearing en banc is denied: The petition for rehearing by the panel is also denied (kfs) (Entered: 02/13/2016)
02/26/2016	402	MANDATE of USCA as to Levon Dean, Jr re 368 Notice of Appeal – Final Judgment. In accordance with the 396 opinion and 398 judgment of 12/29/2015, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter. (src) (Entered: 02/26/2016)

General Docket
Eighth Circuit Court of Appeals

Court of Appeals Docket #: 15-1263
United States v. Levon Dean, Jr.

RELEVENT DOCKET ENTRIES

DATE	DOCKET TEXT
02/04/2015	CRIMINAL case docketed. [4241408] [15-1263] (JMH)
02/04/2015	Originating court document filed consisting of notice of appeal filed 1/30/15, Judgment filed 1/28/15, & docket entries, [4241418] [15-1263] (JMH)
02/04/2015	CLERK ORDER:Appointing Mr. Alan Stoler for Mr. Levon Dean, Jr. under the Criminal Justice Act. [4241436] [15-1263] (JMH)
04/23/2015	BRIEF FILED – APPELLANT BRIEF filed by Mr. Levon Dean, Jr.. w/service 04/20/2015; Length: 6227 words. 10 COPIES OF PAPER BRIEFS FROM Levon Dean Jr. due 04/28/2015 WITH certificate of service for paper briefs . Appellee brief due on 05/14/2015. [4268179] [15-1263] (MDS)
04/23/2015	ADDENDUM of APPELLANT FILED by Appellant Mr. Levon Dean, Jr., w/service 04/23/2015 [4268182] [15-1263] (MDS)

DATE	DOCKET TEXT
06/16/2015	BRIEF FILED – APPELLEE BRIEF filed by United States of America in 15-1263, 15-1349, w/service 06/15/2015, Length: 18,665 words. 10 COPIES OF PAPER BRIEFS FROM United States of America due 06/22/2015 WITH certificate of service for paper briefs . Levon Dean Jr. and Jamal Dean's reply brief due 06/23/2015. [4285777] [15-1263, 15-1349] (MDS)
06/24/2015	BRIEF FILED – APPELLANT REPLY BRIEF filed by Mr. Levon Dean, Jr. w/service 06/23/2015, Length: 3 pages 10 COPIES OF PAPER BRIEFS FROM Levon Dean Jr. due 06/29/2015 WITH certificate of service for paper briefs [4288171] [15-1263] (LAB)
12/29/2015	OPINION FILED – THE COURT: James B. Loken, C. Arlen Beam and Bobby E. Shepherd AUTHORING JUDGE:C. Arlen Beam (PUBLISHED) [4350326] [15-1263, 15-1349] (MDS)
12/29/2015	JUDGMENT FILED – The judgment of the Originating Court is AFFIRMED in accordance with the opinion.. JAMES B. LOKEN, C. ARLEN BEAM and BOBBY E. SHEPHERD Hrg Sep 2015 [4350348] [15-1263] (MDS)

DATE	DOCKET TEXT
01/12/2016	PETITION for enbanc rehearing and also for rehearing by panel filed by Appellant Mr. Levon Dean, Jr. in 15-1263 w/service 01/12/2016 [4355512] [15-1263, 15-1349] (AS)
02/12/2016	JUDGE ORDER:Denying [4355512-2] petition for enbanc rehearing filed by Appellant Mr. Levon Dean, Jr.. The petition for panel rehearing is also denied. Judge Kelly did not participate in the consideration or decision of this matter. PUBLISHED ORDER. [4366699] [15-1263] (MDS)
02/25/2016	MANDATE ISSUED. [4371165] [15-1263] (MDS)
05/02/2016	MOTION to recall the mandate., filed by Appellant Mr. Levon Dean, Jr. w/service 05/02/2016. [4394531] [15-1263] (MDS)
05/12/2016	JUDGE ORDER:Denying [4394561-2] motion to recall the mandate filed by Appellant Mr. Levon Dean, Jr.. Hrg Sep 2015 [4398484] [15-1263] (MDS)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

UNITED STATES
OF AMERICA,

Plaintiff,

vs.

LEVON DEAN, JR.,

Defendant.

No. CR13-4082

TRANSCRIPT OF
SENTENCING

The Sentencing held before the Honorable Mark W. Bennett, Judge of the United States District Court for the Northern District of Iowa, at the Federal Courthouse, 320 Sixth Street, Sioux City, Iowa, January 23, 2015, commencing at 3:30 p.m.

APPEARANCES

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For the Defendant: ALAN G. STOLER, ESQ.
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Also present: Pat Korth, U.S. Probation
Todd Monney
Troy Hansen

Reported by: Shelly Semmler, RMR, CRR
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[2] THE COURT: Thank you. Please be seated.

THE CLERK: This is Case Number 13CR4082, United States of America versus Levon Dean Junior. Counsel, please state your appearances.

MR. FAIRCHILD: Forde Fairchild for the United States.

MR. STOLER: Good afternoon, Your Honor. May it please the Court. Alan Stoler on behalf of Levon Dean.

THE COURT: Good afternoon, Mr. Stoler. Mr. Stoler, have you had a full, fair, and complete opportunity to review the presentence report with Mr. Dean?

MR. STOLER: I have, Your Honor.

THE COURT: And in this case probation scored it as a total offense level 25, criminal history category 4. Count 1 carries a 0- to 20-year sentence. Count 6 carries 5-year consecutive to all other counts; Count 7, 25 years consecutive to all other counts; Count 9, 0 to 10 years. Counts 1 through 3, excuse me, carry 0 to 20. And the advisory guideline range is 84 to 105 months. My understanding is you don't actually object to those calculations, or do you?

MR. STOLER: The – – those I do not object to, no. The presentence report that I had had adjusted offense level of 28, Your Honor.

THE COURT: Oh. Well – – yep, that's right. Let me just – – it's – – I've had a difficult day. You have an objection to the carjacking counts; correct?

[3] MR. STOLER: The carjackings and then the loss on the one vehicle.

THE COURT: Yeah. Well, they kind of go together; right?

MR. STOLER: Yeah.

THE COURT: Yeah. That's right. So it'd be a 28. If I sustain those objections, it'd be a 25.

MR. STOLER: 25.

THE COURT: Yes.

MR. STOLER: And I don't have objection to that.

THE COURT: Right, right. Does the government – – what's the government's position with regard to his objections to the carjacking enhancement and the $10,000 enhancement? If I find no carjacking, that enhancement goes out.

MR. FAIRCHILD: I think probation is correct, but that's the extent of the record I'll make.

THE COURT: Do you want to have any argument on it?

MR. STOLER: No, Your Honor.

MR. FAIRCHILD: No, Your Honor.

THE COURT: Probation is correct in the sense that I have discretion to consider acquitted conduct.

MR. FAIRCHILD: Exactly right.

THE COURT: Yeah. And I do have discretion to consider acquitted conduct, and I've exercised that discretion historically not to enhance people's sentence based on acquitted [4] conduct. And so I'm going to sustain the defense objections. And I think that brings us to a 25, criminal history category 4.

What's the government's sentencing position?

MR. FAIRCHILD: The government makes no specific recommendation. I disagree with Mr. Stoler's reasons for variance. I agree with probation's discussion of the guidelines but make no specific recommendation.

This is a case where when he was willing to plead I thought 13 years was within the range of reasonableness. He, of course, went to trial. We found out more bad stuff about him during trial, but there's still a broad range of reasonableness. I think the guidelines are correctly scored. I'm resisting a departure. I'm resisting a variance, but I think the Court has a lot of discretion here to fashion a sentence.

THE COURT: Why don't we hear your variance argument.

MR. STOLER: Your Honor, obviously the Court knows this case, and just with the sentencing of the brother, Jamal Dean, I'm submitting to the Court that looking at the total picture, looking at the 3553 factors, determining what is an appropriate sentence, that sentencing somebody to a constitutionally mandated 30-year sentence is more than sufficient to accomplish the goals of sentencing and to account for the criminal conduct in this case.

In looking at Levon Dean, the individual, looking at his involvement, obviously he was wrong to be involved. I don't [5] think he was the main culprit, but that doesn't excuse his conduct, and I don't mean by anything I'm saying to excuse that. He obviously had to have a conception of what activities his brother was going to undertake and had undertaken, at least by the time of the -- – for sure by the time of the second robbery, and I recognize that.

But looking at his age and his background and but for having been convicted of aiding and abetting on two separate guns on two separate occasions, we'd be looking at a -- I'd be arguing for a much less sentence than what I'm urging the Court to impose in this case.

But in considering that a sentence of 360 months is mandatory, I would submit to the Court that any sentence you impose on the crimes other than the gun crimes be as little as 1 day and then make the 30 years consecutive to that 1 day.

I would submit to the Court that that should be more than sufficient to accomplish the goals as I've indicated and especially a sentence that's not greater than necessary based upon Levon Dean's involvement in these crimes, Your Honor.

THE COURT: He does have ten criminal convictions that are unscored by my count.

MR. STOLER: I believe a lot – – most, if not all, those points relate to either shopliftings or disturb – – excuse me, disturbing the peaces or possession of marijuana. I think that only four counted under the criminal history category of [6] those – –

THE COURT: Right.

MR. STOLER: – – those things. I think the nature and types of those types of crimes would score only in the one-point category so of lesser – – lesser-type crimes. I recognize – –

THE COURT: He has very little history of violence.

MR. STOLER: He doesn't. I mean, that's correct.

THE COURT: Unlike his brother. I mean, they're very, very different – – they score pretty much the same, but they're very, very different criminal histories.

Have you run across this case? It seems to me several years ago I got reversed for saying that the stacking mandatory minimums like in this case which total

30 years – – I don't remember what they were in that other case – – were sufficient but not greater than necessary and I gave zero on the remaining counts, and the circuit said you have to – – reversed me because they said, you know, they have to be consecutive and you can't be consecutive to nothing.

MR. STOLER: That's why I asked for one day, Your Honor.

THE COURT: Do you recall that case or . . .

MR. STOLER: I don't.

THE COURT: Yeah.

MR. STOLER: But I've had a similar situation in another case in Nebraska that that issue came up as to [7] sentencing in that regard.

THE COURT: So what are the reasons? I mean, going from 84 months down to 1 day is an extraordinary variance.

MR. STOLER: It's an extraordinary variance if we're looking at – – it's not an extraordinary variance if we're looking at the total sentence.

THE COURT: I agree with you, but I think it's impermissible to do that. No, I totally agree with you.

MR. STOLER: Because the ultimate sentence is what we're considering under the 3553 factors. And when you're calculating the total sentence that encompasses a sentence of a mandatory 360 months,

there wouldn't be a need for anything further than that to achieve the goals of sentencing. So the variance for -- I guess the variance would count toward the whole picture is how I would argue that to you, Your Honor.

THE COURT: Does the government think a sentence of 360 months and 1 day is sufficient but not greater than necessary to achieve all of the sentencing purposes in this case?

MR. FAIRCHILD: 360? So the mandatory --

THE COURT: Well, that's the 30 years; right?

MR. FAIRCHILD: The 30 years plus a day?

THE COURT: Yeah.

MR. FAIRCHILD: Is that sufficient but not greater than necessary?

[8] THE COURT: Is that sufficient but not greater than necessary to achieve all of the sentencing purposes?

MR. FAIRCHILD: There is a range of reasonableness. That might be -- that might be reasonable. The defendant's criminal history and conduct I think militate against that, but it's -- I'm not willing to concede it, but it may very well be.

THE COURT: How do you think I'm supposed to look at it? Do you think I'm supposed to look at the overall sentence?

MR. FAIRCHILD: No, I don't think so, not when we have 924(c)'s. I think that's Congress's intent that armed conduct is punished additionally and separately. So I think in the case of 924(c)'s, they do want you to look at it separately. And when you're then talking about variances, I think you are – – you should look at the guideline range independent of the congressional additional punishment.

THE COURT: So I really have to look at this if he was convicted only on Counts 1 through 3 would I vary down to 1 day.

MR. FAIRCHILD: I think that's right, but I'm not confident in that. I think that's right, but I'm not confident in that. Once again, I'm not giving you good advice, Your Honor, and I'm sorry.

THE COURT: In terms of Counts 1, 2, and 3, how do you look at the relative culpability of each of the defendants, the Dean brother defendants?

MR. FAIRCHILD: Yes, sir. Levon Dean followed his [9] brother into – – repeatedly throughout his life but in this case two very violent instances. Levon Dean was appropriately held responsible for that under aider and abettor.

But Levon Dean is not the – – is not as culpable in this case as Mr. Jamal Dean is. Levon Dean did not have the weapons during either of the offenses, though he absolutely was part of a team in full knowing. And – – but he didn't hit J.R. He didn't hit C.B. He did have the gun when Hope Marsh was threatened, and he hit

her and said follow her (sic). But there we even have a literal case of him following his brother.

So the relative culpability is very distinctly Mr. Jamal Dean is far more culpable for this crime. He's far more dangerous. Levon Dean is a follower as evidenced in this crime spree.

And I'm not shrinking from, you know, Mr. Levon Dean's a dangerous person, but relative culpability, Jamal Dean's far, far more culpable, sir.

THE COURT: Mr. Stoler, you think I can look at it totally separately, I mean, and just say – – I mean, I think I'm required to look at it separately. And, you know, there's no way I would – – if I was just looking at the conduct in Counts 1 through 3, I might do a variance, but I wouldn't vary down to one day, and I don't think there's a judge in the country that would.

MR. STOLER: I accept that, but I don't agree with the [10] concept that you don't look at the total – – the big picture of what – – the sentence that you're imposing because ultimately that's what you're doing. You're imposing a sentence taking into account the guidelines and taking in account what Congress has mandated as to a mandatory sentence and determining all of that combined what is the appropriate sentence to impose on Mr. Dean.

THE COURT: Do you have a case that actually says that?

MR. STOLER: I'll be honest. I haven't researched it from that standpoint. I've researched it

from the standpoint of considering the variance and how the ultimate determination of the factors we look at comes into play, and one that keeps coming at to me is a sentence that's no greater than necessary. And the whole sentence is what we're looking at when we're making that determination. So I have quarrel with parsing them out because we're parsing out 30 years and ignoring it. That doesn't make any sense.

MR. FAIRCHILD: You know, hearing – –

THE COURT: But it may be congressional's will even if it doesn't make sense to you.

Anything else either lawyer wants to add – –

MR. FAIRCHILD: No. Thank you, Your Honor.

THE COURT: – – on the appropriate – – anything else on the appropriate sentence?

[11] MR. STOLER: No, Your Honor. I'll submit the matter to the Court.

THE COURT: Okay. Anything else I need to do before – – now, you objected to the offense conduct statement, but do I need to rule on those objections?

MR. STOLER: I don't believe so because I've accepted the guideline determinations.

THE COURT: Yes, right.

MR. STOLER: I just did that, Your Honor, I – – that was probably my fault. When it read to me that – – you saw the trial, and I know that you saw the trial.

THE COURT: Right.

MR. STOLER: I don't need to argue those things I argued at trial again, and I assume by objecting to what I did object to that that would encompass that so . . .

THE COURT: Mr. Dean, you have the right to say anything to me you want to. You don't have to say anything. You have a right to remain silent. If you exercise your right to remain silent, I will not hold it against you in any way. But if you'd like to say something, I'd be happy to hear from you. Is there anything you'd like to say?

THE DEFENDANT: I don't really want to make you any madder. I don't want to say nothing.

THE COURT: Okay. You don't want to say anything?

THE DEFENDANT: Yeah.

[12] THE COURT: Okay. That's fine. Thank you.

Okay. In examining the Title 18, 3553(a) factors, I am going to do a variance, and I'm going to vary down from 84 months down to 40 months, but I'm going to add to that because I'm going to give you a chance to appeal it because if I could go down -- I don't think I have discretion to go down to one day, but I'm going to make a record on that so you can appeal it. And if it comes back, then I'll go down to one day. I just -- this is one of those rare cases where I don't think I have

discretion to do what you want me to do, and that may be – – I may be misreading the law or misunderstanding it, and I recognize I may be doing that. So I'm going to try and make a very thorough record on this.

So I'm varying from 84 months down to 40 months because I think even though Levon was the older brother, I actually thought he was the younger brother based on what I heard in trial. And I might not have remembered if they testified about ages. To my way of thinking he was clearly the follower.

While he has a fairly extensive criminal history, it's over relatively minor things. Does not really have any significant history of any violence. And he wasn't the weapons guy, and he wasn't kind of leading the charge. He was much more of a follower. So those are the reasons why I'm varying down to 40 months.

[13] And it's my view that I have to look at it separately. If I could look at a combined package, I totally agree with you, Mr. Stoler, that 360 months plus 1 day on Counts 1 through 3 is more than suff – – not just sufficient and not greater than necessary. In my view it's more than sufficient for a sentence in this case.

But whether I'm operating under a misguided view of the law or whether it's an accurate view of the law, I don't think I can look at it that way. But if I could, I would agree with your argument, and I would sentence to the two mandatory minimums which total 360 months and then give 1 additional day.

But because I don't think I have discretion to do that – – and that's – – if I'm wrong about that, that's reversible error automatically because I'm saying I don't think I have the discretion to go down that low because I don't think I can look at the overall sentence. And I think we all agree that nobody on Counts 1 through 3 would actually vary down to 1 day if that was standing alone.

So I am going to impose a sentence of 400 months, and that would be based on 40 months on Counts 1 through 3, 40 months on Count 9 all to run concurrently with each other, and then the consecutive 25 years on Count 7 and 5 years on Count 5 to run consecutive to each other and consecutive to the other counts. And I believe that totals 400 months. Is that correct?

MR. STOLER: That's correct.

[14] THE COURT: So it's my judgment that you are hereby committed to the custody of the Bureau of Prisons to be imprisoned for a total term of 400 months. Is there a facility you'd like me to recommend?

MR. STOLER: Your Honor, I don't believe he would qualify for a medium based upon that sentence, so it would have to be a USP. I would ask for it as close to this area so family can visit with him.

THE COURT: Okay. And I believe that would be Leavenworth.

MR. STOLER: Be Leavenworth, yeah.

THE COURT: So I'll recommend Leavenworth or another facility consistent with Mr. Levon Dean's security and custody classification as close to Sioux City, Iowa, as possible. I am going to recommend the 500-hour residential drug treatment program.

Upon release from imprisonment, you'll be placed on supervised release on all counts for three years to run concurrently.

While you're on supervised release, you'll have standard conditions contained in your judgment. You'll also have some special conditions.

You can't violate any state, local, or federal law. You can't possess any illegal drugs. You can't possess firearms, ammunition, or other destructive device or dangerous [15] weapons. You'll successfully participate in the testing and treatment for substance abuse. While you're on supervised release, you're not allowed to go to bars or taverns or other establishments whose primary source of income is derived from the sale of alcohol.

You'll also participate in any mental health treatment and evaluation recommended by the U.S. Probation Office including taking any authorized -- duly legally authorized medications.

You'll need to seek regular employment and attend any employment workshops. And until you obtain full-time employment, you may be required to perform up to 20 hours of community service per week.

You won't be allowed to associate with any gang members, prospects, or associate members or wear any gang clothing or insignia. You'll not have any contact while you're in prison or on supervised release with the victims set forth in paragraph 10. You'll also be subject to the standard search condition which means United States probation officers can search your person, anyplace you live, any automobile, motor vehicle, motorcycle, et cetera, all your personal property including any cellphones, smart phones, cameras, electronic storage devices, iPads, computer, thumb drives, flash drives, et cetera.

You don't have the ability to pay a fine, so the fine [16] is waived. There's a hundred-dollar special assessment on each of the six counts due and owing. You can pay that pursuant to the Bureau of Prisons inmate financial responsibility program. You're remanded to the custody of the United States marshal to serve this sentence.

You have a right to appeal the sentence that I've imposed. If you decide to appeal, you need to file a written notice of appeal no later than 14 days from the date your judgment is filed. If you can't afford to pay for the costs of an appeal or pay for a lawyer on appeal, those costs will be paid on your behalf.

I'd ask the U.S. marshals to accommodate a family visitation.

Mr. Stoler, anything else?

MR. STOLER: No, Your Honor.

THE COURT: Okay. Thank you for your representation.

And anything else, Mr. Fairchild?

MR. FAIRCHILD: Since this will be appealed, just for the record, government objects to the variance and the extent of the variance in case I wasn't sufficiently clear. Thank you.

THE COURT: Okay. Thank you. Anything else from anybody?

Okay. Good luck to you, Mr. Dean. Thank you. We'll be in recess.

(The foregoing sentencing was concluded at 3:54 p.m.)

[17] CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

S/Shelly Semmler — 2-9-15
Shelly Semmler, RMR, CRR — Date

United States District Court
NORTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA	JUDGMENT IN A CRIMINAL CASE
V.	Case Number: CR 13-4082-2-MWB
LEVON DEAN, JR.	USM Number: 13171-029
	Alan G. Stoler Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

■ was found guilty on count(s) 1, 2, 3, 6, 7, and 9 of the Third Superseding Indictment filed on April 16, 2014 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1951	Conspiracy to Interfere with Commerce by Robbery	04/24/2013	1
18 U.S.C. §§ 1951 and 2	Interference with Commerce by Robbery	04/15/2013	2
18 U.S.C. §§ 1951 and 2	Interference with Commerce by Robbery	04/24/2013	3

Additional Counts on Following Page

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

■ The defendant has been found not guilty on count(s) 4, 5, and 10 of the Third Superseding Indictment

■ Count 11 of the Third Superseding Indictment are dismissed on the motion of the United States.

(For Jury Trial purposes Count 10 was changed to Count 9 and Count 11 was changed to Count 10.)

IT IS ORDERED that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material change in economic circumstances.

January 23, 2015
Date of Imposition of Judgment

Mark W. Bennett
Signature of Judicial Officer

Mark W. Bennett
U.S. District Court Judge
Name and Title of Judicial Officer

1.28.15
Date

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 924(c)(1)(A), 924(c)(1)(C)(i), and 2	Possession of a Firearm in Furtherance of a Crime of Violence	04/15/2013	6
18 U.S.C. §§ 924(c)(1)(A), 924(c)(1)(C)(i), and 2	Possession of a Firearm in Furtherance of a Crime of Violence	04/24/2013	7
18 U.S.C. §§ 922(g)(1), 922(g)(3), and 924(a)(2)	Felon in Possession of a Firearm	04/29/2013	9

(Reflected as Count 8 for Jury Trial purposes)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 400 months. This term of imprisonment consists of 40 months imposed on Counts 1, 2, 3, and 9 to be served concurrently with each other; 60 months imposed on Count 6, to be served consecutive to all other counts; and 300 months imposed on Count 7 of the Third Superseding Indictment, to be served consecutive to all other counts.

■ The court makes the following recommendations to the Bureau of Prisons:

That the defendant be designated to USP Leavenworth, Kansas; or to a Bureau of Prisons facility as close to Sioux City, Iowa, as possible, commensurate with the defendant's security and custody classification needs

That the defendant participate in the Bureau of Prisons' 500-Hour Comprehensive Residential Drug Abuse Treatment Program or an alternate substance abuse treatment program.

■ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____

UNITED STATES MARSHAL

By _____

DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: 3 years. This term of supervised release consists of a 3-year term imposed on each of Counts 1, 2, 3, 6, 7, and 9 of the Third Superseding Indictment, to be served concurrently.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant

shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

■ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

■ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony,

unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

The defendant must comply with the following special conditions as ordered by the Court and implemented by the U.S. Probation Office:

1) The defendant must participate in and successfully complete a program of testing and treatment for substance abuse.

2) The defendant must not use alcohol nor enter bars, taverns, or other establishments whose primary

source of income is derived from the sale of alcohol.

3) The defendant must participate in a mental health evaluation and/or treatment program. The defendant must take all medications prescribed to the defendant by a licensed psychiatrist or physician.

4) If not employed at a regular lawful occupation, as deemed appropriate by the United States Probation Office, the defendant must participate in employment workshops and report, as directed, to the United States Probation Office to provide verification of daily job search results or other employment related activities. In the event the defendant fails to secure employment, participate in the employment workshops, or provide verification of daily job search results, the defendant may be required to perform up to 20 hours of community service per week until employed.

5) The defendant must not knowingly associate with any member, prospect, or associate member of any gang without the prior approval of the United States Probation Office. If the defendant is found to be in the company of such individuals while wearing the clothing, colors, or insignia of a gang, the Court will presume that this association was for the purpose of participating in gang activities.

6) The defendant must not have contact during the defendant's term of supervision with the victims set forth in paragraph 10 of the presentence report, in person or by a third party. This includes

no direct or indirect contact by telephone, mail, email, or by any other means.

7) The defendant must submit to a search of the defendant's person, residence, adjacent structures, office or vehicle, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant must warn any other residents that the residence or vehicle may be subject to searches pursuant to this condition. This condition may be invoked with or without the assistance of law enforcement, including the United States Marshals Service.

Upon a finding of a violation of supervision, I understand the Court may: (1) revoke supervision; (2) extend the term of supervision; and/or (3) modify the condition of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

Defendant	Date
U.S. Probation Officers/ Designated Witness	Date

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 600	$ 0	$ 0

☐ The determination of restitution is deferred until ____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(l), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
TOTALS	$_____	$_____	

☐ Restitution amount ordered pursuant to plea agreement $_____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth

day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for ☐ fine ☐ restitution.

☐ the interest requirement for ☐ fine ☐ restitution is modified as follows:

*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ■ Lump sum payment of $ 600 due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D or, ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a

period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Codefendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

United States Court of Appeals
for the Eighth Circuit

No. 15-1263

United States of America

Plaintiff-Appellee

v.

Levon Dean, Jr.

Defendant-Appellant

No.15-1349

United States of America

Plaintiff-Appellee

v.

Jamal Dean

Defendant-Appellant

Appeals from the United States District Court
for the Northern District of Iowa – Sioux City

Submitted: September 24, 2015
Filed: December 29, 2015

Before LOKEN, BEAM, and SHEPHERD, Circuit Judges.

BEAM, Circuit Judge.

Levon and Jamal Dean, brothers, appeal their convictions and sentences arising out of armed robberies of two Sioux City area drug dealers in violation of the Hobbs Act,[1] 18 U.S.C. § 1951, and related counts. We affirm the district court.[2]

I. BACKGROUND

Viewed in the light most favorable to the prosecution, the trial evidence established the following facts. On April 15, 2013, Jessica Cabbell visited her friend

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[1] The Hobbs Act proscribes robbery that affects interstate commerce, making what would often be a state crime, a federal crime. *United States v. Dobbs*, 449 F.3d 904, 911 (8th Cir. 2006). The Supreme Court has granted certiorari in a case that may ultimately limit the reach of the Hobbs Act in cases involving robbery of individual drug dealers. *See United States v. Taylor*, 754 F.3d 217 (4th Cir. 2014), *cert. granted*, 136 S. Ct. 26 (Oct. 1, 2015) (granting certiorari on the issue of whether the government can meet the interstate commerce element by relying exclusively on evidence that the robbery of a drug dealer is an inherent economic enterprise that satisfies the interstate commerce element of the offense). However, unlike the Fourth Circuit, our precedent requires the government to actually prove that robbery of a drug dealer is linked to interstate commerce, *compare Taylor*, 754 F.3d at 222-23, *with United States v. McCraney*, 612 F.3d 1057, 1064-65 (8th Cir. 2010), so we doubt that the ultimate outcome in *Taylor* will affect the instant case.

[2] The Honorable Mark W. Bennett, United States District Judge for the Northern District of Iowa.

Reggie Galvin in South Sioux City, Nebraska. Sarah Berg was also at Galvin's, and Cabbell, a prostitute, told the other two she was scheduled to have a "date" with J.R., who was a known methamphetamine and marijuana dealer from LeMars, Iowa, later that night. Both women had previously dealt with J.R. as a drug dealer and had exchanged sex for drugs with him. However, J.R. apparently owed Berg money based upon the previous dealings, or according to Berg, had taken $400 of her money. Berg expressed a desire to collect that money. Berg and Galvin decided that in order to collect the money J.R. owed, they would need "muscle." It was agreed that the Dean brothers would provide the muscle.

The Deans arrived at Galvin's house, and then Berg, Cabbell, and the Deans proceeded to the Palmer House Motel in Sioux City, Iowa, where Cabbell's "date" with J.R. was to take place. Cabbell had informed J.R. that another woman would join them at some point, but did not tell J.R. that it would be Berg. Cabbell arrived alone at J.R.'s room, and she and J.R. smoked methamphetamine together. A bit later, Berg and the Deans arrived. Berg immediately confronted J.R. about the stolen money, while Jamal pulled a gun on J.R. and demanded the money in question. Meanwhile, Levon ransacked the room looking for money and drugs. Cabbell left the scene because she alleges she did not know a firearm would be involved. When J.R. reached for his car keys, Jamal hit J.R. on the head with the gun, and Berg took J.R.'s car keys, cell phone, and a pipe containing methamphetamine. Jamal

threatened to kill J.R. if he called police. With Berg driving, Berg and the Deans drove away in J.R.'s car. Despite Jamal's warning, J.R. used the motel manager's cell phone to call 911 and report the robbery. Cabbell, Berg, and the Deans again met up at Galvin's house in Nebraska after the robbery and lamented the lack of spoils from the robbery.

On April 24, 2013, Levon and Jamal robbed another methamphetamine dealer (C.B.) in the dealer's home, at gunpoint. Jamal hit C.B. with his gun, and the Deans stole approximately $300 in cash, about 20 grams of methamphetamine, a digital scale, electronic and computer equipment, and old cell phones. The Deans ordered Hope Marsh, who was living there, to pack her stuff because she was to come and live with them. She apparently complied, and the trio drove away in C.B.'s two cars. Sioux City police issued arrest warrants for the Deans, and Levon was arrested in Sioux City pursuant to the warrant. On April 29, police attempted to pull over a vehicle Jamal was riding in during a traffic stop. Because he knew about the warrant, Jamal instructed the car's driver to try to evade police. When the driver eventually did stop the car, Jamal jumped out and shot his rifle in an attempt to evade capture. Jamal eventually disposed of the loaded weapon in a nearby alley trash dumpster and escaped from authorities. He was eventually arrested in Texas in May 2013.

In April 2014, an eleven count, Third Superseding Indictment was returned charging Jamal, Levon, and Berg with: conspiracy to commit robbery under the

Hobbs Act, in violation of 18 U.S.C. § 1951 (Count 1); Hobbs Act robbery, in violation of 18 U.S.C. §§ 2 and 1951 (Counts 2 and 3); carjacking, in violation of 18 U.S.C. §§ 2 and 2119(1) (Counts 4 and 5); possession of a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. §§ 2, 924(c)(1)(A)(ii), and 924(c)(1)(C)(i) (Counts 6 and 7); being felons in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1), 922(g)(3), and 924(a)(2) (Counts 8 and 9); and interstate transportation of a stolen vehicle, in violation of 18 U.S.C. §§ 2 and 2312 (Counts 10 and 11).[3] All three defendants filed motions to sever in which each argued that Berg's trial should be severed and tried separately. A magistrate judge[4] severed Berg's trial from the Deans', and Berg ultimately pleaded guilty to several counts and testified at trial against the Deans.

On August 29, 2014, the jury returned a verdict finding Jamal guilty on the offenses charged in Counts 1, 2, 3, 4, 6, 7, and 8, and acquitted him of the charges in Counts 5 and 9. The jury found Levon guilty of the charges in Counts 1, 2, 3, and 8, and acquitted him of the charges in Counts 4, 5, and 9. In addition, Levon was acquitted of the primary charges in Counts 6 and 7, but was found guilty on each count of the lesser included offense of possessing a firearm in furtherance of a crime of violence. The district court denied the

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[3] The original Count 8 was severed prior to trial, and the remaining counts were renumbered accordingly. Count 11, which was by then Count 10, was dismissed prior to reaching the jury.

[4] The Honorable Leonard T. Strand, United States Magistrate Judge for the Northern District of Iowa.

motions for judgment of acquittal prior to the jury's verdict, and the post-trial motions for judgment of acquittal and new trial. Jamal's sentencing Guidelines range was 140-175 months in addition to mandatory consecutive minimums of seven and twenty-five years on the 18 U.S.C. § 924(c) counts. *See* 18 U.S.C. § 924(c)(1)(D)(ii) (mandatory consecutive sentence). However, the district court varied upwards to sentence Jamal to life in prison. Levon was sentenced to 400 months, which included a 360-month mandatory minimum consecutive sentence for the § 924(c) offenses. Without the mandatory minimums, Levon's Guidelines range was 84-105 months. Thus, the district court gave Levon a substantial downward variance of 40 months for the Guidelines sentence, which was by statutory directive consecutive to the 360-month mandatory sentence.

On appeal, Levon challenges the sufficiency of the evidence to establish a nexus to interstate commerce required for the Hobbs Act robberies; the sufficiency of the evidence for his firearm convictions; and the reasonableness of his sentence. Jamal argues the court erred in refusing to exclude in limine any reference to gangs or gang affiliation; there was insufficient evidence of the nexus to interstate commerce for the Hobbs Act robberies; the district court erred in refusing to give supplemental jury instructions regarding the nexus to interstate commerce; the government proved multiple, as opposed to a single, conspiracy and the district court's failure to give a proffered jury instruction in that regard; there was insufficient

evidence to convict him of carjacking; the district court should have granted a new trial in the interests of justice; and his life sentence, imposed after the district court heard hearsay testimony at the sentencing hearing, was procedurally flawed and violates due process.

II. DISCUSSION

A judgment of acquittal is only appropriate if the evidence is insufficient to sustain a conviction. Fed. R. Crim. P. 29(a). A guilty verdict should be overturned only if, after viewing the evidence in the light most favorable to the prosecution, no rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *United States v. Sanchez*, 789 F.3d 827, 834 (8th Cir. 2015). Like the district court, we view the evidence in the light most favorable to the guilty verdict, and grant all reasonable inferences that are supported by that evidence. *Id.*

A. Hobbs Act

Both defendants assert that there was insufficient evidence linking the robbery of J.R., C.B., or both to interstate commerce to support a Hobbs Act violation. The district court denied this point in the post-trial motions, noting that our precedent quite liberally construes the nexus-to-commerce requirement in the Hobbs Act. Indeed, where a federal statute has an express jurisdictional nexus-to-commerce requirement, the crime's actual connection to interstate commerce

may be quite small. *United States v. McAdory*, 501 F.3d 868, 871 (8th Cir. 2007).

The Deans reference a three-part test (originating in the Fifth Circuit, but cited with approval in *United States v. Quigley*, 53 F.3d 909, 910-911 (8th Cir. 1995)) to determine whether there is an adequate nexus to interstate commerce in a Hobbs Act case involving robbery of a drug dealer: (1) whether the robbery affected the victim's ability to buy and sell drugs in interstate commerce; (2) whether there is a likelihood that as a result of the robbery, the victim would have to deplete the assets of an entity engaged in commerce; and (3) whether the number of individuals victimized or the sum at stake is so large that there will be a cumulative effect on interstate commerce. *United States v. Collins*, 40 F.3d 95, 100 (5th Cir. 1994). As we understand this test, only one of these three prongs must be met in order to establish the interstate commerce nexus. Here, the first prong is met for both robberies. There is ample evidence that C.B. was robbed of an amount of methamphetamine (20 grams) that could have and would have been distributed by C.B. The evidence with regard to J.R. is less ample, but sufficient for the jury to convict on this count. The evidence indicates that J.R. was hoping to exchange methamphetamine for sex with Cabbell, and the interstate encounter was interrupted by Berg and the Deans before the transaction was complete.

Further, under our precedent, because the Deans robbed drug dealers, the offense arises under the Hobbs Act so long as there is any evidence regarding

the interstate character of the drug dealing – i.e., that the drugs came from a different state than the dealings, that the dealer had customers in different states, or both. *United States v. McCraney*, 612 F.3d 1057, 1064-65 (8th Cir. 2010). And, because the transactions at issue took place in the Sioux City area, a metropolitan area reasonably encompassing three different states, the interstate nexus requirement was easily met in this case. Indeed, the evidence at trial indicated that C.B. received his methamphetamine from Nebraska and sold it in Iowa, South Dakota, and Nebraska. J.R. testified that he sold methamphetamine in South Dakota and Iowa.

The Deans argue that *Quigley* mandates a different result. In that case, we held that there was an insufficient nexus to interstate commerce when defendants robbed two intoxicated Native Americans of .80 cents and a pouch of chewing tobacco on a road between Valentine, Nebraska, and Crookston, Nebraska, where the victims were en route to purchase alcohol. 53 F.3d at 910-11. We rejected the government's argument that the robbery affected interstate commerce by preventing the victims from reaching the store to make their alcohol purchase. *Id.* at 911. For the reasons stated above, the current factual scenario is much more similar to *McCraney* than *Quigley* and we affirm the Deans' Hobbs Act convictions.

B. Conspiracy

Jamal's next sufficiency argument is that instead of proving a single conspiracy, the evidence instead showed that there were multiple conspiracies – one to rob J.R. and another one to rob C.B. – resulting in a variance between the indictment and proof, and requiring a judgment of acquittal. Whether one conspiracy or multiple conspiracies have been proved is determined by the totality of the circumstances. *United States v. Slagg*, 651 F.3d 832, 842 (8th Cir. 2011). And, if a variance has occurred, reversal is warranted only if the variance infringed upon a substantial right. *Id.*

Jamal's argument that the robberies of J.R. and C.B. were not related enough to support a single conspiracy count is well taken. J.R. was robbed to pay back a debt allegedly owed to Berg, and the robbery of C.B. happened nine days later. However, as the government points out, the two robberies were similar in style, means, and motive, and both were carried out by the Deans. Jamal cites *United States v. Delgado*, 653 F.3d 729, 736 (8th Cir. 2011), in support of his argument that multiple conspiracies (as opposed to a single conspiracy) were proven in the instant case. In *Delgado*, the government was able to establish that a series of separate crimes was all part of one overarching agreement to conspire. It did so based upon evidence of significant overlap and connection between the conspirators in a large scale cocaine distribution scheme. *Id.* Jamal claims that such evidence is lacking in this case. Given our standard of review of the jury's verdict, we reject Jamal's arguments. The circumstantial

evidence admitted at trial – the robberies were both committed by the brothers acting in concert; both targets were low-level methamphetamine dealers; both robberies took place in Sioux City; and the robberies occurred during a relatively short two-week time span – is enough to sustain the jury's verdict. And, even if there was a variance, such a variance was harmless error because it did not infringe on Jamal's substantial rights. The evidence clearly showed Jamal participated in both robberies (and thereby both conspiracies) as the gunman. Because Jamal would have been guilty of both conspiracies, his substantial rights were not violated if two conspiracies were proven instead of one. *Id.*

Relatedly, Jamal argues there was no proof of an agreement regarding the alleged object of the conspiracy – to rob drug traffickers. Jamal argues that the reason the two men were robbed had very little to do with the fact that they were drug traffickers, and there was certainly no agreement to rob drug traffickers. The government asserts that the fact that Jamal chose known drug traffickers as the two victims of his robberies allowed the jury to infer that robbing drug dealers was the object of the conspiracy. Again, given our standard of review of the jury's verdict in a motion for judgment of acquittal, we reject Jamal's sufficiency arguments in this regard. Jamal argues that J.R. and C.B. were not big time drug dealers, and arguably J.R. did not come to Sioux City for the purpose of selling drugs, but those were arguments he also unsuccessfully made to the jury. In fact, the evidence showed that J.R. had in the past, and was that day again hoping to

barter drugs for sex when contacted by Cabbell. Accordingly, there was sufficient evidence that J.R. was poised to exchange drugs for sex with Cabbell and that the Deans' agreement to rob him significantly thwarted that plan. Further, the 20 grams of methamphetamine taken from C.B. rather easily allowed the jury to infer an agreement to rob a drug dealer. Accordingly, Jamal's object-of-the-conspiracy argument is without merit.

C. Carjacking

Jamal next argues there was insufficient evidence to convict him of carjacking when he stole J.R.'s[5] vehicle following the robbery. A conviction pursuant to 18 U.S.C. § 2119 requires the government to prove that the defendant took a motor vehicle "from the person or presence of another" and "with the intent to cause death or serious bodily harm." Jamal argues there was no evidence that Jamal intended J.R. to suffer serious bodily harm as a result of the carjacking. The government responds that after Berg had taken J.R.'s car keys, Jamal's act of hitting J.R. in the head with the rifle and threatening to kill him if he called police satisfies the serious-bodily-injury element. We agree that there was evidence presented at trial of both the threat to J.R.'s life, in addition to the bloody wound, and later medical care following the blow to the head that would allow the jury to find this element of the offense. *See*

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[5] Jamal and Levon were both acquitted of carjacking in Count 5, which was the incident with regard to C.B.'s vehicles.

United States v. Waldman, 310 F.3d 1074, 1078 (8th Cir. 2002) (holding that evidence of threats to kill during a carjacking if the driver did not follow instructions was sufficient to satisfy the serious bodily injury element); *United States v. Garcia-Alvarez*, 541 F.3d 8, 16 (1st Cir. 2008) (holding that the wound that left victim bleeding and requiring medical care and surgery satisfied the serious bodily injury element). Jamal seems to argue that, given that he had a gun at the scene, he certainly could have caused a more serious injury than he did. However, the government is not required to prove that Jamal caused the most serious injury possible. Here there was sufficient evidence of a serious bodily injury to satisfy the statute.

Jamal further argues that the lack of proximity of J.R. to the car at the time of his injury precludes conviction under § 2119. And Jamal asserts that the stolen car was incidental to the robbery and not an object of it. However, the defendant unsuccessfully made similar arguments in *United States v. Casteel*, 663 F.3d 1013, 1019-20 (8th Cir. 2011) (holding that the elements of the "carjacking statute may be satisfied when the victim of the carjacking is inside a building and the stolen car is parked outside"),[6] and *Garcia*, 541 F.3d at 16 (holding that the carjacking statute does not require that the taking of a vehicle be the only or primary

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[6] In *Casteel*, the defendant challenged the "presence of another" portion of the statute, while Jamal purportedly challenges the "bodily injury" element. However, we understand Jamal's argument to be a hybrid of the two – Jamal contends both that the injury itself was not serious, and that J.R.'s distance from the car prevented the serious injury from being related to the car theft.

motive of the crime). Accordingly, we also deny Jamal's arguments in this regard. Because there was sufficient evidence that the injury to J.R. was indeed, serious, neither J.R.'s proximity (or lack thereof) to the vehicle itself nor the ultimate motive of the encounter with J.R. is dispositive.

D. Firearms Offenses

Levon argues there was insufficient evidence to convict him of possessing and aiding and abetting in the possession of a firearm. Levon contends that the verdict was contrary to the evidence at trial, which, he asserts showed that Jamal was the only one possessing or using the firearm during the robberies. In support, Levon cites *Rosemond v. United States*, 134 S. Ct. 1240, 1249-50 (2014) (holding that in order to be convicted of aiding and abetting in the possession of a firearm during another crime, the defendant must know beforehand that his confederate will carry a gun, and that once he did know, he did not walk away). Levon argues that he did not know beforehand that his brother Jamal would have a gun during the robberies and did not have the opportunity to walk away once he did know. After reviewing the trial transcript, we find Levon's arguments in this regard disingenuous. At least two witnesses described Jamal's "gun walk" – the way Jamal walked with a limp when hiding a gun in his pants. The jury could easily infer that if these witnesses knew how Jamal looked with a hidden gun, so too did Levon. The government further points out that Cabbell did exactly what Levon asserts he could not do

in order to avoid the firearm prosecution – once she realized Jamal had a gun, she left the April 15 robbery premises because she does not "rob people with guns." Finally, following the April 15 robbery, it was even more obvious that Levon knew about Jamal's gun during the April 24 robbery, and the evidence shows that at one point during the April 24 robbery, Levon actually held the firearm. Accordingly, this argument is without merit.

Jamal also argues the evidence is insufficient to convict him for possession of and brandishing a firearm in furtherance of a crime of violence. However, the evidence at trial clearly established he had a gun and used it during the robberies of J.R. and C.B. and during the carjacking. We understand Jamal's primary point on this issue to be that if we were to reverse the Hobbs Act and carjacking convictions, we would also need to vacate the firearms offenses that require predicate "crime of violence" offenses. Because we have not reversed Jamal's other convictions, his firearms arguments are without merit.

E. Pretrial and Trial Error

Jamal argues that the district court should have granted his motion in limine to exclude any evidence of his alleged gang affiliation, arguing that any mention of gangs was unduly prejudicial. *See United States v. Ford*, 761 F.3d 641, 649-50 (6th Cir.) (holding that gang affiliation evidence is inadmissible if there is no connection between the gang evidence and the charged

offense), *cert. denied*, 135 S. Ct. 771 (2014). The government counters that despite the district court's failure to exclude gang membership in limine, there was no mention of gangs at trial. Further, the district court's reasoning not to categorically exclude the evidence prior to trial – because it may have been necessary for context – was sound. *See United States v. Johnson*, 28 F.3d 1487, 1497 (8th Cir. 1994) (holding that evidence of gang association may be necessary to show the nature and extent of the association between defendants). We review the district court's admission or exclusion of evidence for an abuse of discretion. *United States v. Sewell*, 457 F.3d 841, 843 (8th Cir. 2006). Having carefully reviewed the trial transcript, we agree with the government's assertion that there was no evidence of gang affiliation at trial. There was extensive evidence of gang affiliation at Jamal's sentencing hearing. However, as we understand Jamal's argument, he is not challenging the specific content of the sentencing hearing testimony but instead the hearsay nature of it, a subject we will address below. Accordingly, this point is denied.

Jamal next makes several arguments regarding allegedly erroneous jury instructions. First, in relation to the previously discussed Hobbs Act argument, Jamal asserts that the district court erred in refusing to give his requested instruction that "interfering with commerce" is an element of the crime. However, Jamal requested this instruction for Count 1, which was the *conspiracy* to commit Hobbs Act robberies. The instruction as given read, "at some time during the period of

the conspiracy – that is, from a date unknown until about April 29, 2013 – in the Northern District of Iowa, two or more persons reached an agreement or understanding to commit robberies of drug traffickers." The government points out that the instruction adequately informed the jurors to find Jamal guilty if he agreed with another to commit robberies of drug traffickers. Indeed, longstanding Eighth Circuit precedent supports the government's interpretation. *See Nick v. United States*, 122 F.2d 660, 673 (8th Cir. 1941) (holding that government did not need to prove that defendants knew the effect of their conspiracy would be to affect interstate commerce; but rather that they agreed to do something, the natural effect of which was to affect interstate commerce). Further, the government points out that "interstate commerce" was defined in the jury instruction directly preceding the challenged instruction, and was specifically included as an element of the offense regarding Counts 2 and 3, the actual Hobbs Act counts. We review the district court's jury instructions for an abuse of discretion and will reverse only if the instruction did not fairly and adequately represent the evidence and law. *United States v. Manes*, 603 F.3d 451, 458 (8th Cir. 2010). Because the instruction fairly and adequately represented the evidence and the law, we deny this point.

Jamal also argues the district court erred in instructing the jury on possession, relating to his conviction on Count 8 for prohibited possession of a firearm and ammunition. Possession was defined in the instructions as follows: "A person possessed something if

all three of the following are true: the person knew about it, and the person had physical control over it or a vehicle in which it was concealed or transported, or the power, or ability, to control it, and the person had the intention to control it. . . ." Jamal claims the words "or transported" after the word "concealed" was inconsistent with constructive possession. The gist of Jamal's argument is that there may have been a firearm in the car that he did not know about and thereby would not have had constructive possession of it. This argument is without merit. The district court's instruction required the jury to find that Jamal had knowledge of any firearm, and indeed, the evidence supports the jury's finding. Jamal carried a firearm at all pertinent times in the underlying crime spree. Jamal used the firearm during a traffic stop on one occasion, and used it as a weapon to hit both J.R. and C.B. on the head at other times. Because the instruction fairly and adequately represented the evidence and the law, we reject this point.

Jamal's final complaint about the jury instructions is the district court's failure to give a multiple-conspiracy jury instruction. As recounted above, Jamal argues that the government proved two conspiracies, but only alleged one in the indictment. A single conspiracy is comprised of people sharing common objectives under one general agreement. *United States v. Benford*, 360 F.3d 913, 914 (8th Cir. 2004). As earlier noted, we found that there was sufficient evidence for the government to establish one single conspiracy. Accordingly, Jamal's lack of success on the merits of

the multiple- versus single-conspiracy claim precludes him from prevailing on his claim that the district court erred in refusing to give his "multiple conspiracies" jury instruction.

F. New Trial

Based upon many of the foregoing arguments, Jamal argues that the weight of the evidence preponderates sufficiently against the verdicts so that a serious miscarriage of justice will result unless a new trial is granted. Jamal focuses on the testimony of J.R. that he had told Cabbell prior to their April 15 encounter that he did not have any money to pay for sex, and therefore J.R.'s robbery did not affect interstate commerce. The standard for granting a motion for new trial is more lenient than for a judgment of acquittal; the court is allowed to vacate any judgment if the interests of justice so require. *United States v. Knight*, 800 F.3d 491, 504 (8th Cir. 2015). However, the decision to grant or deny a motion for a new trial based upon the weight of the evidence is within the sound discretion of the trial court. *Id.* The district court thoroughly reviewed Jamal's request for a new trial and determined that the interests of justice did not so require. Given that we were not persuaded by Jamal's earlier discussed Hobbs Act arguments, we find no abuse of discretion in the district court's decision to deny a new trial.

G. Sentencing

Jamal and Levon both appeal certain aspects of their sentences. We review the district court's sentencing factual findings, including relevant conduct, for clear error, and its construction and application of the Guidelines de novo. *United States v. Howard*, 759 F.3d 886, 889 (8th Cir. 2014). Further, the district court has broad discretion at sentencing concerning the kind and source of the information it receives. *United States v. Garcia*, 774 F.3d 472, 475 (8th Cir. 2014) (per curiam). Further, a sentencing proceeding does not carry the same evidentiary protections as a trial and the court may consider uncorroborated hearsay evidence if it has sufficient indicia of reliability. *Id.*

Jamal's calculated sentencing Guidelines range was 140-175 months on counts 1, 2, 3, 4, and 9, in addition to mandatory consecutive minimums of seven and twenty-five years on the 18 U.S.C. § 924(c) counts. The district court varied upwards and sentenced Jamal to life in prison, reasoning that due to a number of violent incidents, both in regards to the charged conduct, and previous uncharged conduct, the court needed to protect the public from Jamal. In so doing, the court heard testimony about these events from several individuals at the sentencing hearing, some of which constituted hearsay. Jamal contends that the district court procedurally erred in relying upon this hearsay testimony because there was not sufficient indicia of reliability to render this testimony reliable. The challenged testimony from three witnesses involved Jamal's alleged role in a 2012 incident wherein

he allegedly shot a member of a rival gang, J.E., ostensibly in retaliation for J.E. stabbing a member of Jamal's gang. Two of the challenged witnesses were police officers who were told by numerous people that Jamal had committed the shooting. The third witness was a paramour of J.E. She testified that when J.E. awoke from a coma, he told her that Jamal had shot him. Interestingly enough, J.E. testified at the sentencing hearing and alleged he "did not see" who shot him, nor did he recall the conversation with his girlfriend in the hospital. However, an overriding theme from numerous of the non-law-enforcement witnesses at the sentencing hearing was that they were there under subpoena and duress because they were members of various rival gangs in the Sioux City area. On the other side of the coin, numerous of these same witnesses were hoping to receive leniency in their various criminal sentences in return for government-favorable testimony. At bottom, given the tenor and tone of the sentencing hearing after thoroughly reviewing the transcript, we agree with the district court's finding that the paramour's detailed account of the events pre- and post-shooting have sufficient indicia of reliability such that the district court could rely upon it, despite the fact that her testimony identifying Jamal as the shooter was clearly hearsay.

Furthermore, the district court's overall sentencing decision to vary upwards to protect the public from Jamal was not substantively unreasonable. We "consider the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard." *Gall*

v. United States, 552 U.S. 38, 51 (2007). "[I]f the sentence is outside the Guidelines range, the court may not apply a presumption of unreasonableness. It may consider the extent of the deviation, but must give due deference to the district court's decision that the § 3553(a) factors, on a whole, justify the extent of the variance." *Id.* It was within the district court's considerable discretion to vary upwards and sentence Jamal to life in prison. The district court very thoughtfully considered Jamal's unusually active and violent criminal history for a defendant only twenty-three years old, and, it seems to us, rather reluctantly came to the conclusion that the only possible just sentence was life in prison. Accordingly, we affirm the district court's sentence.

Levon was subject to five-year and twenty-five-year mandatory sentences (360 months) for the 924(c) offenses. His Guidelines range was 84-105 months for the remaining counts. Levon requested that the district court sentence him to one day for the remaining counts, given the harshness of the 360-month mandatory sentences. The district court stated on the record that it would like to do just that, but felt it did not have the discretion to do so based upon our decision in *United States v. Hatcher*, 501 F.3d 931, 933-34 (8th Cir. 2007) (holding that a district court unreasonably varied downward in sentencing a defendant to one day for the crimes not subject to a mandatory minimum, solely because the mandatory sentence was 300 months). Levon argues that the district court erred when it ruled that it did not have discretion to impose a lower

Guidelines sentence based upon the harshness of the mandatory minimums. We see no meaningful difference between the situation in *Hatcher* and what Levon requested in this case. Accordingly, the district court correctly noted his inability to sentence Levon as requested. Thus, we find that the district court's 40-month sentence, to be served consecutively with the 360-month sentence, for a total sentence of 400 months, was substantively reasonable and not an abuse of the district court's discretion.

III. CONCLUSION

We affirm the judgments of the district court in this well-tried, multiple-count, joint-defendant criminal case.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 15-1263

United States of America

Plaintiff-Appellee

v.

Levon Dean, Jr.

Defendant-Appellant

Appeal from U.S. District Court for the
Northern District of Iowa – Sioux City
(5:13-cr-04082-MWB-2)

JUDGMENT

Before LOKEN, BEAM and SHEPHERD, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

December 29, 2015

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 15-1263

United States of America

Appellee

v.

Levon Dean, Jr.

Appellant

Appeal from U.S. District Court for the
Northern District of Iowa – Sioux City
(5:13-cr-04082-MWB-2)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Judge Kelly did not participate in the consideration or decision of this matter.

February 12, 2016

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

October 28, 2016

Mr. Alan G. Stoler
1823 Harney Street
Suite 1004
Omaha, NE 68102

Re: Levon Dean, Jr.
v. United States
No. 15-9260

Dear Mr. Stoler:

The Court today entered the following order in the above-entitled case:

The motion of petitioner for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is granted limited to Question 2 presented by the petition.

Sincerely,

/s/ Scott S. Harris
Scott S. Harris, Clerk